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PROGRESS OF THE LAW.

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Bids, Mandamus

The bidder for municipal contracts has a hard time of it, unless, as sometimes happens, he owns the town. He has even fallen under the animadversion of the Supreme Court of the United States, which has held, in a recent case, that as mandamus lies to an officer to do only such ministerial duty as existed when the application for mandamus was made, it will not lie to compel him to sign a contract in accordance with an advertisement for public work, and a bid therefor, when, before the application, the work was readvertised, and the same person made a lower bid, under which he obtained a contract for the work: *United States* v. *Lamont*, 15 Sup. Ct. Rep. 97. See 1 AM. L. REG. & REV. (N. S.) 899; *Ibid.*, 742, 819, 820, 851; 2 AM. L. REG. & REV. (N. S.) 5.

The Supreme Court of North Carolina has ruled, that

punitive damages will not be awarded against a railway company, because, by reason of defective equipments, it failed to carry a person to whom it had sold an excursion ticket, back to his starting point, when the only injuries complained of are such as result from inconvenience, delay, and disappointment, and there is no evidence of bad motives on the part of defendant: *Hansley* v. *Jamesville & W. R. Co.*, 20 S. E. Rep. 528; disapproving *Purcell* v. *R. R.*, 108 N. C. 414; S. C., 12 S. E. Rep. 954. Clark, J., dissented.

Carriers, Breach of Contract, Damages

According to a recent decision of the Supreme Court of Appeals of West Virginia, when the proper official of a railroad company fails to inform a conductor of a change in its rules and regulations as to the sale of tickets and the stoppage of its trains, and the conductor, acting through want of the necessary information, wrongfully refuses to carry a passenger to his destination, and ejects him from the train, the company is liable to the passenger, in an action on the case, for the damages sustained by reason of the wrong committed: *Sheets* v. *Ohio River R. R. Co.*, 20 S. E. Rep. 566.

Ejection of Passenger

The statutory right to recover damages for death occasioned by the negligence of another, has lately been made the subject of a very curious ruling by the Supreme Court of Vermont, to the effect that a statute of Massachusetts, making railroad companies liable for death by their wrongful act, in an action by the executor of the deceased, in damages not "less" than a certain amount, to be assessed with reference to the culpability of the company, and providing that in case the deceased leaves no widow or child the damages shall go to his next of kin, is a penal statute, and that therefore an action cannot be brought under that statute in another state: *Adams* v. *Fitchburg R. R. Co.*, 30 Atl. Rep. 687.

Conflict of Laws, Death by Wrongful Act

The question whether a statute giving compensation to the relatives of the deceased is to be regarded as penal or compensatory, of course depends upon its wording; but the

general tendency is to regard it as compensatory, unless clearly otherwise. If penal, no action lies thereon in another state; but if compensatory merely, suit can be maintained thereon in any state where the deceased was domiciled, if the law of that state is not inconsistent with that of the state under which the action is brought: *Nelson* v. *Chesapeake & Ohio R. R.*, 88 Va. 971; *Wintuska's Admr.* v. *Louisville & N. R. Co.*, (Ky.), 20 S. W. Rep. 819. The statutes need not be precisely alike; it is sufficient if they are similar in policy, are founded on the same principle, and give substantially the same right of action to redress similar wrongs. It makes no difference that the mode of distribution of the damages recovered is not the same, if the provisions of the statute under which the suit is brought can be carried out by the existing legal machinery of the courts of the forum; nor does it alter the case that the limit of recovery is fixed in the one case by statute, but left in the other to the discretion of the jury: *Hanna* v. *Grand Trunk Railway Co.*, 41 Ill. App. 116. (In this case the action was brought under the laws of Canada.) But suit cannot be brought in a federal court in the state of the domicile, by any one not authorized to sue by the laws of the state of the injury, though such person is authorized to sue by the laws of the former state: *Wilson* v. *Tootle*, 55 Fed. Rep. 211. When the laws of the two states are radically different, such a suit cannot be maintained: *St. L., Iron Mountain & So. Ry. Co.* v. *McCormick*, 71 Tex. 660; S. C., 9 S. W. Rep. 540; *Belt* v. *Gulf, C. & S. F. Ry. Co.*, (Tex.), 22 S. W. Rep. 1062; and when the laws of the state of injury, (in this case Mexico,) give no right of action, no suit can be maintained in another state: *De Ham* v. *Mexican Nat. R. R. Co.*, (Tex.), 22 S. W. Rep. 249. There is an instructive article on this subject, by Gilbert E. Porter, in 35 Cent. L. J. 185.

Conspiracy, Injunction

The Supreme Court of Oregon, in *Longshore Printing & Pub. Co.* v. *Howell*, 38 Pac. Rep. 547, while asserting that when persons conspire to injure or destroy another's business or property, and it clearly appears that the injury is threatened and imminent, and will

be irreparable, an injunction will lie to restrain the conspirators, refused to grant an injunction on allegations made by the plaintiff that the members of the defendant trades union conspired to compel him to submit to the union's dictation, upon pain of being boycotted in business; that the executive committee of the union entered the plaintiff's premises without license, and ordered his employes to strike, and that subsequently the union ordered another strike, both of which orders were obeyed; that the defendant induced the city council, by threats of boycott at the polls, to reject plaintiff's bid for the city printing, although that bid was the lowest made; that defendant threatened to boycott plaintiff's customers if they patronized him, on account of which he lost one customer, and will lose another; and that defendant circulated the fact of the strikes by posting notices thereof in numerous places, all to the past injury and future danger of plaintiff's business; on the ground that these allegations were not sufficiently definite to justify the issuance of an injunction. This is mere pandering to the labor unions.

Constitutional Law, Suits Against State

The Supreme Court of the United States has ruled, in *State of South Carolina* v. *Wesley*, 15 Sup. Ct. Rep. 230, that when a suit is brought against persons for property which they claim to hold as custodians of the state, and the state does not intervene, but expressly refuses to submit its rights to the jurisdiction of the court, it cannot ask the supreme court to review the refusal of the trial court to dismiss the complaint against the defendants, on the suggestion of the state that the action was really against the state, brought without its consent, and that the court had no jurisdiction.

Contempt

The Circuit Court for the Northern District of Illinois, in *U. S.* v. *Debs*, 64 Fed. Rep. 724, has decided, that when persons have entered into a conspiracy to boycott certain cars, and for that purpose engaged in a conspiracy to restrain and hinder interstate commerce in general, and in futherance of that design, those actively engaged used threats, violence, and other unlawful means of

interference with the operations of the roads, and, instead of respecting an injunction commanding them to desist, persisted in their purpose without essential change of conduct, they were guilty of contempt; and that any improper interference with the management of a railroad in the hands of receivers is a contempt of the court's authority in making the order appointing the receivers, and enjoining interference with their control of the road.

This is the decision against which Mr. William Draper Lewis inveighed so strongly in the December number of this magazine, 1 AM. L. REG. & REV., (N. S. 879,) and it may not be amiss to point out here the fallacy of that writer's argument. The question of the criminality of the acts of the strikers had nothing to do with the question of the injunction. That question was simply whether or not the strikers, *as a body*, should be permitted to interfere with the property of the railroads, so as to prevent the carrying on of interstate commerce, *with which only the federal courts were concerned.* Those courts had nothing whatever to do, in the shape in which the question was brought before them, with the individual criminal acts of the strikers, whether regarded as offences against the state laws, or against those of the United States. The matter was brought before them solely on the interstate commerce clause of the Constitution, and the act of Congress passed in furtherance of it, prohibiting all combinations in restraint of interstate commerce. But this act is only a re-enactment, *pro tanto*, of the common law, which prohibits all contracts in restraint of trade; and a conspiracy is none the less a contract between the conspirators, because it is not a commercial transaction. Now, the question of what is a restraint of trade is one peculiarly for the court, not for the jury; and it follows, therefore, that it in no sense deprives the conspirator of a trial by jury, to forbid him to do the acts which violate the statute, and to punish him if he disobeys the prohibition. He is punished, not for the act done, but for the disobedience. This view of the case completely does away with the objection that such process is a deprivation of the right of trial by jury.

Again, it is urged that an injunction must rest upon a claim of right. This may be more readily conceded, because in this case the claim of right existed; for it is not essential that the claim be a valid one. Preposterous as it may seem, the laboring classes are at present claiming an interest in the property of their employer, and even, as in the Homestead strike, a right to take the management of that property wholly out of his hands, and to control it themselves. The very ground claimed as an essential of the injunction process is therefore present; and the employe can be enjoined from so treating the property of his employer. The fact that he damages the property in asserting this claim is a mere incident, and whatever its effect as to the criminal liability of the employe, cannot affect the other question.

Contract, Public Policy

According to a recent decision of the Supreme Court of North Carolina, an agreement for compensation for procuring the appointment or resignation of a public officer, is void, as against public policy; and therefore a mortgage, given to secure the payment of compensation for procuring the appointment or resignation of such an officer, is also void, for the same reason: *Basket* v. *Moss*, 20 S. E. Rep. 733.

Corporations, Proxies

The Supreme Court of California, has lately held, that, under their statute, a stockholder may choose any person to cast his vote, and a by-law providing that no proxy shall be voted by any one not a stockholder, is unreasonable and invalid: *People's Home Savings Bank* v. *Superior Court of City and County of San Francisco*, 38 Pac. Rep. 452.

Service, Agent

According to the Supreme Court of Missouri, a freight solicitor in charge of a railway business office is "an officer or agent of such corporation," within the meaning of a statute providing for service on the corporation by delivering a copy of the summons and complaint to such officer or agent: *Davis* v. *Jacksonville South-Eastern Line*, 28 S. W. Rep. 965. See 2 AM. L. REG. & REV. (N. S.) 10.

Decedents' Estates, Administration, Fraud, Revocation

In the opinion of the Court of Appeals of Maryland, letters of administration granted to the second son of a decedent, upon the representation that he is the only son, should be revoked for fraud, although the oldest son may since have filed a renunciation of his right to the appointment: *Lutz* v. *Mahan*, 30 Atl. Rep. 645.

Easement, Light

It is strange, that some people never seem to consider a point of law as finally settled, no matter how overwhelming the weight of authority may be. The Supreme Court of North Carolina has lately been called upon to decide, that a person who leases rooms in a building for the purpose of taking photographs, is not entitled to damages from an adjoining landowner, because the latter builds so as to shut off the lessee's light on the side of the leased premises, as there is no easement of light by prescription in the United States: *Lindsey* v. *First Nat. Bk. of Asheville*, 20 S. E. Rep. 620. There is no easement by prescription in light and air: *Knabe* v. *Levelle*, 23 N. Y. Suppl. 818; *Levy* v. *Samuel*, 23 N. Y. Suppl. 825; S. C., 4 Misc. Rep. 48; *Western Granite & Marble Co.* v. *Knickerbocker*, (Cal.), 37 Pac. Rep. 192; nor will such an easement be implied, as to land of the lessor, by the lease of a building to be used for a purpose requiring light, such as marble cutting: *Keating* v. *Springer*, 146 Ill. 481; S. C., 34 N. E. Rep. 805.

Elections, Ballots

The Supreme Court of California, in *Lay* v. *Parsons*, 38 Pac. Rep. 447, has ruled, that the provision of the Ballot Law, requiring a voter to place a cross, marked by a stamp, opposite the name of each candidate for whom he votes, is mandatory. The same view was taken in *Sego* v. *Stoddard*, (Ind.), 36 N. E. Rep. 204. See 1 AM. L. REG. & REV. (N. S.) 748.

Nominating Conventions

The Supreme Court of Michigan has recently held, (1) That in a convention for the nomination of candidates for public offices, the question whether certain delegates are entitled to vote may be properly submitted to a committee on credentials; and, (2) That in case of a

tie vote at such a convention, neither the election officers nor the candidates can determine the result by lot, in the absence of a statutory provision authorizing such action: *Beck* v. *Board of Election Commissioners*, 61 N. W. Rep. 346.

Evidence, Confidential Communications.

The Supreme Court of Idaho, in *Perry* v. *State*, 38 Pac. Rep. 655, holds, Huston, C. J., dissenting, that though confidential communications between attorney and client are privileged, and neither can be compelled to reveal them, yet if they are overheard by a third party, either by accident or design, that third person can be compelled to testify to them.

Dying Declarations

According to the opinion of the Supreme Court of North Carolina, in *State* v. *Caldwell*, 20 S. E. Rep. 523, when the deceased, before making his declaration to his physician, tells him that he knows he is going to die, the fact that the physician tells him that he too thinks he is going to die, but hopes he will get well, and that another person has just told him that the physician had hopes for him, will not render the declarations inadmissible. See 1 AM. L. REG. & REV. (N. S.) 813; 2 AM. L. REG. & REV. (N. S.) 15.

Gifts Causa Mortis

The question of the validity of gifts *causa mortis* comes very frequently before the courts. Among others, the Supreme Court of Rhode Island has recently decided, that evidence that, the day before deceased died, after her daughter had handed her certain books, as requested, among which was a bank book, she returned them to the daughter, saying, "Take the books, and keep them; they are yours forever;" coupled with the evidence of another witness that deceased told her shortly thereafter that she had given that daughter all her property, because she had nursed her during her sickness, will not establish a *donatio causa mortis*, in the face of evidence that deceased had always intended to make a larger provision for another daughter, and several years before her death had made a will, in which the first daughter was appointed executrix, and which would be almost wholly defeated if the gift was allowed to stand; that the

second daughter had been to see the deceased during her illness, and had offered to nurse her, which proposition was declined by the first daughter, who lived in the same house as her mother; and that deceased was suddenly taken worse, and died before the second daughter knew that she was seriously ill: *Citizens' Sav. Bk.* v. *Mitchell*, 30 Atl. Rep. 626.

The evidence to establish a *donatio causa mortis* must be clear and convincing, and inconsistent with any retention of control or possession by the donor; and therefore, when the donee of a bank book has included the balance in bank in his inventory of the decedent's estate, and has otherwise treated it as a part of that estate, it will be held to be such, and not a gift: *Wiegel's Estate*, 76 Hun, 462; S. C., 31 Abb. N. C. 159; 28 N. Y. Suppl. 95. But a gift of money on deposit in a bank, effectuated by delivery of the bank book by the donor to the donee, and its acceptance by the latter, is not invalidated by the fact that it is accompanied with a direction to the donee to divide the balance of the money, after the payment of the donor's doctor's bill and funeral expenses, between himself and others named by the donor: *Loucks* v. *Johnson*, 70 Hun, 565; S. C., 24 N. Y. Suppl. 267. But, though a *donatio causa mortis* may be made in trust for a third person, the mere handing of a certificate of deposit to another for safe keeping, with a request to see that the decedent's children get the money in case he dies, is not valid as such: *Dunn* v. *German-American Bk.*, 109 Mo. 90. There is also a marked difference between the gift of a savings bank book and one of a national bank. The validity of the former as a *donatio causa mortis* depends on the effect of such delivery, according to the rules of the bank; the delivery of the latter, not affecting the right of the donor to withdraw the deposit by check, is, as a rule, ineffectual: *Thomas* v. *Lewis*, 89 Va. 1; *Jones* v. *Weakley*, (Ala.), 12 So. Rep. 420. There is a valuable article on this subject, by James M. Kerr, in 36 Cent. L. J. 354; and a very full annotation, in 31 AM. L. REG. 681.

The maxim, *de minimis non curat lex*, applies only when

both the thing itself, and its effects, are of infinitesimal importance. What is apparently more insignificant than a pin? And yet a pin may become of supreme importance, and, as shown by the Supreme Court of North Carolina, which has been fortunate enough to have the opportunity to decide this totally new point in criminal law, not only one, but even two lives, may depend upon it. In the opinion of that court, the pushing of a pin down an infant's throat, thereby producing its death, is killing it by means of a deadly weapon, and if the intention to so take the child's life is deliberately formed, and carried into execution, it is murder in the first degree: *State* v. *Norwood*, 20 S. E. Rep. 712.

Homicide, Deadly Weapon

The Supreme Court of California, in *Peo.* v. *Worthington*, 38 Pac. Rep. 689, has very wisely ruled, that evidence showing that the defendant was told by her husband to kill the deceased, and that she did so, does not tend to prove that the defendant was hypnotized, and so render admissible evidence of the effect of hypnotism on people subject to its influence.

Hypnotism, Evidence

The Supreme Court of Wisconsin has lately held, in *Lord* v. *American Mut. Acc. Assn.*, 61 N. W. Rep. 293, that it is for the jury to determine whether a total loss of three fingers and a part of another on the same hand, destruction of the joint of the thumb, and a cutting of the hand, is a loss of the hand "causing immediate, continuous, and total disability," within the meaning of that clause in a policy of accident insurance. This contrasts very strongly with the indefensible decision of the Supreme Court of New York, that when the plaintiff's hand was cut off a short distance above the knuckles, leaving nearly the whole palm, and part of the second joint of the thumb, which the plaintiff testified was of considerable use to him, it was not a loss of "one entire hand," within the meaning of an accident policy: *Sneck* v. *Travellers' Ins. Co. of Hartford*, 30 N. Y. Suppl. 881. Bradley, J., dissented, as well he might.

Insurance, Accident, Total Loss

The control of the federal government over interstate com-

merce is one of the most important questions of the day, and has of late been almost constantly before the courts. The Supreme Court of the United States, Justices Harlan, Brewer and Jackson, dissenting, has decided that the business of marine insurance, like other insurance business, is not commerce, or an instrumentality thereof, but merely an incident, and therefore the constitutional provision as to interstate commerce does not prevent a state from prescribing conditions on which a foreign insurance company may do business in the state, or from enforcing such conditions: *Hooper* v. *People of State of California*, 15 Sup. Ct. Rep. 207.

Interstate Commerce, Insurance, Marine, License

Mr. John G. Johnson, of the Philadelphia Bar, has at last secured a final victory in the Sugar Trust Case; but one that reflects little credit on the body that awarded it. The Supreme Court of the United States, in a long opinion by Mr. Chief Justice Fuller, affirming the decree of the Circuit Court of Appeals, reported in 60 Fed. Rep. 934, which in turn affirmed the decision of the Circuit Court, reported in 60 Fed. Rep. 306, has decided, that the agreement by which the American Sugar Refining Company incorporated with itself the Philadelphia Refineries, thus securing absolute control over ninety-eight per cent. of the total out-put of refined sugar in the United States, with the necessarily incident power to dictate the price of that commodity throughout the Union, is not within the prohibition of the act of Congress of July 2, 1890, (26 Stat. at Large, 209, c. 647), providing "that every contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade and commerce among the several states, is illegal, and that persons who shall monopolize or shall attempt to monopolize, or combine or conspire with other persons to monopolize trade and commerce among the several states, shall be guilty of a misdemeanor." The opinion is a remarkable one. In brief, it amounts to just this, (after one has washed from his eyes the dust kicked up to blind them, and has taken time to sift the few grains of wheat from the pages of chaff,) that such a contract is not within the purview of the statute, because it refers

Restraint of Trade

primarily to the *manufacture* of the article in question, and not to its interchange among the states, and is consequently not within the power of Congress to regulate interstate commerce. But this conclusion was only arrived at by studiously ignoring the facts, that the people of the United States, not merely those of Pennsylvania, have been forced to pay higher prices for sugar since the contract in question; and that the direct result of that contract was to affect interstate commerce, by precluding all competition in that particular trade. It also ignores the fact that the parties to the contract were citizens of different states, and therefore peculiarly within the jurisdiction of the federal government. Suppose one state had undertaken, under its own laws, to set aside such a contract. The parties would instantly have raised this very objection to the state jurisdiction, and this same court, which so strenuously insists that the annulling of such a contract is solely within the state power, would have been obliged to admit that claim, or overturn a series of judicial decisions reaching back almost to the beginning of our national history. It would be delightful to see the court impaled on the horns of that dilemma. But it is well-nigh useless to comment further on this decision, for Mr. Justice Harlan, who is so uniformly found on the right side of a question as to almost create the impression of infallibility, dissented from the rest of the court, in clear, forcible, intelligent language, which bears the strongest contrast to the inane hedging and futile searching for support, that characterize the main opinion. It is matter of regret that his opinion is too long to quote in full. Two paragraphs, however, are so clear in their presentation of the true bearings of the case, and the effect of the decision, that they must be given place:

"Undue restrictions or burdens upon the purchasing of goods, in the market for sale, to be transported to other states, cannot be imposed even by a state, without violating the freedom of commercial intercourse guaranteed by the Constitution. But if a *state* within whose limits the business of refining sugar is exclusively carried on may not constitutionally impose burdens upon purchases of sugar *to be transported to other*

states, how comes it that combinations of corporations or individuals, within the same state, may not be prevented by the national government from putting unlawful restraints upon the purchasing of that article *to be carried from the state in which such purchases are made?* If the national power is incompetent to repress state action in restraint of interstate trade as it may be involved in purchases of refined sugar to be transported from one state to another state, surely it ought to be deemed sufficient to prevent unlawful restraints attempted to be imposed by combinations of corporations or individuals upon those identical purchases; otherwise, illegal combinations of corporations or individuals may, so far as national power and interstate commerce are concerned, do, with impunity, what no state can do. . . .

"If this [that Congress has power to prohibit such combinations] be not a sound interpretation of the Constitution, it is easy to perceive that interstate traffic, so far as it involves the price to be paid for articles necessary to the comfort and well-being of the people in all the states, may pass under the absolute control of overshadowing combinations, having financial resources without limit, and an audacity in the accomplishment of their objects that recognizes none of the restraints of moral obligations controlling the action of individuals; combinations governed entirely by the law of greed and selfishness—so powerful that no single state is able to overthrow them and give the required protection to the whole country, and so all-pervading that they threaten the integrity of our institutions."

There is one other consideration that might have been urged, and that is this: No one questions to-day the fact that the Constitution of the United States, in common with all constitutions, is not a cast-iron frame, adapted only to the circumstances in which it was moulded, but is elastic, and capable of being adapted to new conditions as they arise. No one, also, will question the fact that the framers of the Constitution, had they foreseen the occurrence of a contingency like the present, would have prepared express means to meet it. Now, when such means exist by implication, and can be

adapted to the end with far less of violence than in the case of many an actual usurpation of power, what sound reason can be given for refusing to employ them? The Constitution never intended that Congressmen should be elected for their monetary qualifications; that they should purchase re-election by River and Harbor appropriations; that a convention of delegates of worse than doubtful antecedents should dictate to the people the choice of a President; or that an actual minority of the people of the country, by means of an accidental majority of Congressmen, the unjustifiable unseating of members of the opposite party to increase that majority, and the violation of every principle of parliamentary law, should enact laws to enrich the few at the expense of the many; and yet all these things have been done, and have been winked at, if not actually favored, by this same court. It is enough to say that if this decision stands, and if it is true that the national government is powerless to protect the people against such combinations as this, which the states are both unwilling to assail and powerless to overthrow, then this government is a failure, and the sooner the social and political revolution which many far-sighted men can see already darkening the horizon overtakes us, the better.

Interstate Rendition

The court last mentioned holds, with far better reason, that the courts of a state from which a fugitive from justice is demanded by rendition proceedings, do not deny to such person any rights secured to him by the Constitution and Laws of the United States, by refusing to pass on the constitutionality of the statute of the demanding state under which the indictment against such person is sufficient: *Pearce* v. *Texas*, 15 Sup. Ct. Rep. 116.

Fugitives

The Supreme Court of North Carolina, in *State* v. *Hall*, 20 S. E. Rep. 729, has laid down the absurdly technical rule, that when a person is murdered in one state by persons in another, shooting across the border, the criminals, who has never been actually within the territory of the state of the injury since the commission of the crime, though it was constructively committed there, are not

persons who have fled from justice and been found in another state, within the meaning of the Constitution of the United States, Art. IV, § 2, cl. 2, providing that a person so doing shall be surrendered on demand of the state from which he has fled; but graciously acknowledges, that though the governor cannot surrender such a person without statutory authority, (*sed quære*?), the legislature may supply this *casus omissus*, and give him the power. Clark, J., dissented, in a very forcible opinion, declaring that in his estimation, "a person who places himself outside the limits of the state, from thence to commit the crime within the state, and ever afterwards avoids going into said state to avoid arrest, as truly 'flees from justice' as he who, having committed a crime, flees from the state subsequently. If an infernal machine sent by mail or express from a distant state explodes and kills the receiver, it is murder committed in the latter state. The sender skulking in another state to avoid arrest is as truly a fugitive from justice as if he had accompanied the machine to its destination, and then fled." In reference to the suggestion that the state legislature might pass a law providing for the surrender of the criminal in such a case, he makes the following keen criticism: "It is true the several states might pass statutes broader than the clause quoted from the federal constitution, but it is also true that some of them might fail to do so. The federal constitution does not contemplate leaving the security of so many cities and towns, lying near state boundaries, dependent upon the inadvertence or unwillingness of the legislature of a neighboring state to pass an extradition law more liberal than the federal constitution."

The view of the majority of the court rests upon a fancied analogy with the case of *State* v. *Mohr*, 73 Ala. 503. There a person, who it was claimed had obtained goods by false pretences from the New York agent of the prosecutor, a resident of Pennsylvania, the false representations, if any, being made to the agent, and who had never been in Pennsylvania, was held not to be a fugitive. There is this noticeable difference between the cases, that in the latter case there had been no commission of the crime, constructive or otherwise, in Penn-

sylvania; which is sufficient reason for the correctness of that decision. This saving element is wanting in the North Carolina case. As to who is a fugitive, see 2 AM. L. REG. & REV. (N. S.) 18.

Intoxicating Liquors, Social Clubs

The liquor laws are another subject of continued dispute, and the decisions are sometimes hopelessly conflicting, both with each other and with common sense. The Supreme Court of Missouri, however, is usually correct on such questions, and has again proved itself so by holding that an incorporated club is not a person, within the meaning of an act requiring the "person" licensed to satisfy the court that he is a law-abiding, assessed, tax-paying, male citizen, over twenty-one years of age; and that when a *bona fide* social club, with limited membership, admission to which cannot be obtained by persons at pleasure, and whose property is actually owned in common by its members, distributes liquors belonging to it among them, it is not an illegal sale, within the prohibition against sales by persons not licensed: *State* v. *St. Louis Club*, 28 S. W. Rep. 604.

This is the prevailing opinion: *Graff* v. *Evans*, 8 Q. B. D. 373; *Tennessee Club* v. *Dwyer*, 11 Lea, (Tenn.), 452; *Piedmont Club* v. *Comm.*, 87 Va. 540; S. C., 12 S. E. Rep. 963; *State* v. *McMaster*, 35 S. Car. 1; S. C., 14 S. E. Rep. 290; *Barden* v. *Montana Club*, (Mont.), 25 Pac. Rep. 1012; *Comm.* v. *Pomphret*, 137 Mass. 564; though some courts have thought otherwise, and have punished the steward of the club as an unlicensed seller of liquor: *Martin* v. *State*, 59 Ala. 34; or at least required the club to pay the license tax required of retailers: *Kentucky Club* v. *Louisville*, 92 Ky. 309; *Peo.* v. *Soule*, (Mich), 41 N. W. Rep. 908; *State* v. *Boston Club*, (La.), 12 So. Rep. 895; *Nogales Club* v. *State*, 69 Miss. 218. If, however, the club is a mere device to evade the provisions of the license law, the person who dispenses the liquor is, of course, liable for a violation of that law: *Comm.* v. *Ewig*, 145 Mass. 119; S. C., 13 N. E. Rep. 365; *Comm.* v. *Tierney*, 148 Pa. 552; and any sale by a club to its members, in violation of a prohibition or local option law, is illegal: *State* v. *Easton*

Social Club, 73 Md. 97; S. C., 20 Atl. Rep. 783; *State* v. *Lockyear*, 95 N. C. 633; *State* v. *Neis*, 108 N. C. 787. There is an excellent article on this question in 14 Crim. L. Mag. 541, and a long, well-considered annotation thereon, in 31 AM. L. REG. 861.

Landlord and Tenant, Parol Lease

The Supreme Court of New Jersey has recently decided, in *Williams* v. *Mershon*, 30 Atl. Rep. 619, that when a lease is made of the wife's land, by the husband, for one year, with the privilege to the tenant of a further term of four years, without authority from her, the act of the wife in receiving the share of the farm products reserved by the lease for the first year will not operate by way of estoppel to create a term for five years. Her assent, under the statute of frauds, must be in writing.

Lease, Option to Purchase

The Supreme Court of Vermont, in *Mack* v. *Dailey*, 30 Atl. Rep. 686, has ruled, (1) That when a lease provides that if the lessee keeps all its conditions he may purchase the land, the acceptance by the landlord of the rent after it is due, without objection, waives a breach of the condition as to the time of its payment; and, (2) That a provision in the lease that the lessee may buy the land "at the option of the parties," means that the lessee may buy at his own option.

Larceny, Consent of Owner

The Supreme Court of North Carolina has recently held, in accord with the weight of authority, (1) That one who forms the design to steal, and carries out that design, is guilty, though the owner is advised of the intended larceny, appoints agents to watch the thief, and allows him to commit the theft, with a view to having him punished; (2) That when the agent of the owner of the property tells a servant to persuade a third person to steal that property, and he does so, and the property is taken by such person, the latter is not guilty of larceny, though he had previously formed the intent to steal it; for (3) Larceny cannot be committed unless the stolen property be taken against the will of the owner; and therefore cannot be committed, when the owner, through his agent, consents to the

taking and asportation, though the consent is given for the purpose of apprehending the criminal: *State* v. *Adams*, 20 S. E. Rep. 722.

It is well settled, that there can be no larceny with the consent of the owner, even if that consent is given for the sole purpose of entrapping the person suspected, and the doer of the act does not know of the existence of the circumstances which prevent the criminal quality from attaching: *Connor* v. *Peo.*, 18 Colo. 373. The same is true in the case of extortion: *Peo.* v. *Gardner*, 73 Hun, 66.

Libel, Person Meant

According to a recent decision of the Supreme Court of Michigan, when, in an action for libel for publishing a newspaper article, stating that plaintiff was arrested for larceny, and giving the number of his residence, evidence is given that another person of the same name as plaintiff was arrested, it does not show, as matter of law, that defendant intended in good faith to refer to such other person: *Davis* v. *Marxhausen*, 61 N. W. Rep. 504. See 2 AM. L. REG. & REV. (N. S.) 21.

License Tax, Hawkers and Peddlers

In the opinion of the Supreme Court of South Carolina, a person who solicits orders, by sample, for sewing machines and their parts and attachments, for a foreign sewing machine company, which has a store and stock of goods in the state, from which such orders are filled, is not a "hawker or peddler," though he occasionally sells a sample machine out of his wagon: *State* v. *Morehead*, 20 S. E. Rep. 544.

Malicious Prosecution, Advice of Attorney

The Supreme Court of Iowa holds, with good reason, that the fact that the defendant in an action for malicious prosecution consulted an attorney before prosecuting the plaintiff for opening his mail, is not admissible as proof of probable cause, when it also appears that the attorney gave defendant no advice, but referred him to the United States officers: *Holden* v. *Merritt*, 61 N. W. Rep. 390. There is an annotation on this subject in 1 AM. L. REG. & REV. (N. S.) 591.

Married Women, Separate Estate, Liability

The Supreme Court of Mississippi has recently decided, that when a note made in another state by a married woman is sued on in Mississippi, the liability of her separate estate therefor will be determined by the laws of the latter state; and will be held to charge her separate estate there, though it could not do so under the laws of the place of contract: *Read* v. *Brewer*, 16 So. Rep. 350.

Master and Servant, Independent Contractor

The Court of Appeals of Maryland, in *City & Suburban Ry. Co.* v. *Moores*, 30 Atl. Rep. 643, has reasserted some of the familiar principles of the law concerning the liability of an employer for the act of an independent contractor; holding, that though a person who owes a duty to the public in the execution of any work, cannot relieve himself from liability for a breach of that duty by committing the work to an independent contractor, yet neither (1) A railway company, which permits an engine to be run on its tracks by a contractor in performing his contract with third parties, nor (2) A turnpike company, which lawfully permits an independent contractor to operate an engine over railway tracks laid on the pike, in performing his contract with the company, is liable for an injury caused by the negligent operation of the engine.

As a general rule, the employer will not be liable for the negligence of an independent contractor, if he has selected one who is competent, and the work to be done is safe, when ordinary care is used: *Engle* v. *Eureka Club*, (N. Y.), 32 N. E. Rep. 1052. (1) But the contractor must be independent, that is, left to use his own discretion as to the manner of executing the work, and the choice of laborers and agencies; a mere *power* of control, however, if not actually exercised, will not make the master liable for the acts of the contractor: *Norwalk Gas Light Co.* v. *Norwalk*, 63 Conn. 495; S. C., 28 Atl. Rep. 32. The direction of what shall be done, also, if not connected with control over the manner and means of doing it, does not alter the relation: *Morgan* v. *Smith*, 159 Mass. 570; S. C., 35 N. E. Rep. 101. (2) It is not enough

that the master should not knowingly employ one who is incompetent; he must exercise due care to select one who is competent and skilful: *Norwalk Gas Light Co.* v. *Norwalk*, 63 Conn. 495; S. C., 28 Atl. Rep. 32. If he employs a person known to be negligent, or to be in the habit of carrying on his work in a dangerous manner, he is liable: *Brannock* v. *Elmore*, 114 Mo. 55; S. C., 21 S. W. Rep. 451. (3) If the work to be done is in its nature dangerous, or injurious to others, the master cannot relieve himself from liability by delegating the performance of it to an independent contractor: *Colegrove* v. *Smith*, (Cal.), 36 Pac. Rep. 411; *Williams* v. *Fresno Canal & Irr. Co.*, 96 Cal. 14; S. C., 30 Pac. Rep. 961; *Brennan* v. *Schreiner*, 20 N. Y. Suppl. 130; *Ketcham* v. *Cohn*, 22 N. Y. Suppl. 181; S. C., 2 Misc. Rep. 427; *Pye* v. *Faxon*, 156 Mass. 471. Nor can he so delegate the performance of any duty he owes to the public, or to private individuals, as to escape liability: *Carrico* v. *West Va. Cent. & P. Ry. Co.*, (W. Va.), 19 S. E. Rep. 571; *Spence* v. *Schultz*, (Cal.), 37 Pac. 220; *Hanover* v. *Whalen*, 49 Ohio St. 69. (4) If the work done by an independent contractor is accepted and used when in an imperfect condition, the owner is liable for any injury caused by its defects: *Donovan* v. *Oakland & Berkeley Rapid Transit Co.*, (Cal.), 36 Pac. Rep. 516. There is a long annotation on this subject, in 31 AM. L. REG. 352.

Municipal Corporations, Penal Ordinances

The Supreme Court of Florida, in *Theisen* v. *McDavid*, 16 So. Rep. 321, has very clearly stated the principle which control the right of a municipal corporation to enact penal ordinances, as follows: (1) That, unless forbidden by the constitution, the legislature can clothe municipal governments with power to prohibit and punish by ordinance any act made penal by the state laws, when done within the municipal limits. (2) Such an ordinance is not invalid, merely because it prescribes the same penalties as the state law for the commission or omission of the same act. (3) It is no valid objection to such an ordinance, that the offender may be tried and punished for the same act under both the ordinance and the state law. (4) A

conviction or acquittal by the municipal courts, under such an ordinance, is no bar to a prosecution under the state law. (5) Such an ordinance is not invalid, merely because the trial thereunder is without a jury. (6) Nor is it invalid, because it excepts from its operation certain business pursuits that are not excepted from the operation of the state law on the same subject.

To the same effect is *Hunt* v. *City of Jacksonville*, (Fla.), 16 So. Rep. 398. See 1 AM. L. REG. & REV. (N. S.) 669, 869.

Negligence, Imputed, Parent and Child

The question of the imputation of contributory negligence is one of frequent discussion; and presents itself in an unceasing variety of circumstances and relations. The Supreme Court of Georgia, in a very long and carefully considered opinion, has lately held, in *Atlanta & C. Air-Line Ry. Co.* v. *Gravitt*, 20 S. E. Rep. 550, that (1) When a father entrusts his minor son of tender years to the care and custody of another, that person becomes the legal representative and agent of the father in discharging the duty which the law imposes upon the latter of guarding and shielding the child from injury; and accordingly, if the child, by reason of the gross negligence of his custodian, is run over by a passenger train and killed, such negligent conduct is, in law, imputable to the father himself; (2) Such a custodian cannot, however, be properly regarded as also the representative or agent of the mother of the child, since, in that state, the father is, by express statute, invested with the control of his minor children, and the mother is not accountable for the conduct of the custodian chosen for them by the father; and (3) In a suit by the mother in her own right as authorized by special statute, she is not chargeable with the negligence of the father, merely because of the conjugal relation existing between them. See 1 AM. L. REG. & REV. (N. S.) 314, 870; and an annotation in 32 AM. L. REG. 763.

According to a recent decision of the Supreme Court

of Florida, which follows the general rule on the subject,

Negotiable Instrument, Coupons, Interest

coupons payable to bearer, attached to a railroad bond, and representing the semi-annual instalments of interest accruing thereupon, are, in legal effect, promissory notes, and possess all the attributes of negotiable paper; they may be detached and negotiated separately by simple delivery, and may be sued on separately from the bond, after the bond itself has been paid and satisfied, as well as before; and when once detached and negotiated, they cease to be mere incidents of the bond, become independent claims, and carry interest after their maturity: *Trustees of Internal Imp. Fund* v. *Lewis*, 16 So. Rep. 325.

The Supreme Court of Iowa has ruled, that when a person induces another to sign a paper containing no writing, and

Instrument Void for Fraud, Bona Fide Holder

which is to be used merely as a means of identifying the signer, who does not intend to execute a note or contract of any kind, and then fills out the blanks so as to make the paper a note, the note will be void, even in the hands of an innocent holder; and such evidence is sufficient to warrant a finding that the note was forged: *First Nat. Bk. of Grand Haven* v. *Zeims*, 61 N. W. Rep. 483.

According to the Court of Appeals of Maryland, an agreement between two parties to farm on shares, one of whom is

Partnership

to expend a certain sum in the farming operations, does not constitute a partnership, though one of the parties spoke of it as such: *Rose* v. *Busher*, 30 Atl. Rep. 637.

The Supreme Court of North Carolina is of opinion, that a defendant in a criminal prosecution, who testifies in his own

Perjury, Testimony of Defendant

behalf and of his own accord, is guilty of perjury if he testifies falsely. He is to be treated the same as any other witness: *State* v. *Hawkins*, 20 S. E. Rep. 623. To the same effect are *Murphy* v. *State*, (Tex.), 26 S. W. Rep. 395; *Hutcherson* v. *State*, (Tex.), 24 S. W. Rep. 908.

Let the photographers beware how they decorate their windows! The Circuit Court for the District of Massachusetts has lately held, in *Corliss* v. *Walker*, 64 Fed. Rep. 280, (1) That it is a breach of contract and violation of confidence for a photographer to make unauthorized copies of a customer's photograph; and (2) That though a private individual may enjoin the publication of his portrait, a public character cannot, in the absence of breach of contract or violation of confidence in securing the photograph from which the publication is made; and (3) That one who is among the foremost inventors of his time is a "public character," within the above rule.

Photographs, Reproduction

The Supreme Court of Kansas, in *Werner* v. *Graley*, 38 Pac. Rep. 482, has ruled that though in an action of replevin the measure of damages for the wrongful detention is ordinarily the interest on the value of the property while wrongfully detained, yet, when the property has a usable value, the value of its use while so detained is a proper measure of damages.

Replevin, Damages

The Supreme Court of New York, Fourth Department, following the general rule, has recently held, that a manufacturer will be protected in the use of a geographical name, by which his goods are known to the public, as against another manufacturer, who uses the same name to designate a similar article, not for the purpose of describing the place where the goods are made, but for the fraudulent purpose of deceiving purchasers: *Gebbie* v. *Stitt*, 31 N. Y. Suppl. 102. There is an annotation on this subject in 1 AM. L. REG. & REV. (N. S.) 514. See also 2 AM. L. REG. & REV. (N. S.) 30.

Trade Name

The Court of Appeals of Kentucky has just passed upon a most important question, under the Kentucky statutes, §1350, providing that all wage earners shall be paid for their wages in lawful money. A mining company paid its employes once each month, in lawful money, for the labor of the past month, and at any time

Wages, Payment in Money

during the month, upon their application, issued checks to them, payable in merchandise at the company's store. The amount of checks so issued to each man was deducted from his wages on every pay day, and he was paid the balance in cash, but no money was paid for outstanding checks. This arrangement was held not to be a violation of the statute: *Avent Beattyville Coal Co.* v. *Comm.*, 28 S. W. Rep. 502.

This is hardly in accord with the weight of authority. In *Hancock* v. *Yaden*, 121 Ind. 366; S. C., 23 N. E. Rep. 253, a contract by an employe that he would receive his wages, or any part thereof, at the option of his employer, in goods from the latter's store, and expressly waived his right to be paid according to the statute of that state, was held to be absolutely void, and could not be pleaded as a bar to an action for the wages due the employe. In *State* v. *Loomis*, (Mo.), 20 S. W. Rep. 332, the defendant issued to his employe a coupon check book for $5 in payment of his wages, which stated that the book was good for merchandise at the defendant's store, when presented by the employe; and it appeared that the amount of the coupons was deducted from the employe's wages and charged to him. This was held a violation of the act. But an order given to the plaintiff, for labor performed, directing another to pay him $180, is not an evidence of indebtedness for wages, payable "otherwise than in lawful money of the United States," within the statutory prohibition: *Agee* v. *Smith*, 7 Wash. 471; S. C., 35 Pac. Rep. 370.

A statute similar to those in the above cases was held unconstitutional by the Supreme Court of Pennsylvania, in *Godcharles* v. *Wigeman*, 113 Pa. 431, why, no one knows, but ostensibly on the ground that it was an attempt to prevent persons *sui juris* from making their own contracts; the judge who delivered the opinion, (one from whom better things might have been expected,) saying with that tinsel-like speciousness of epigram that is so often foisted on the world in place of sound reason, that it was "an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States." But with all the deference

possible under the circumstances, one may well stop to inquire whether it is more degrading, to be forced to labor at wages barely sufficient to keep soul and body together, and then be compelled to accept goods at exorbitant prices instead of the needed money, or to be freed from that oppression, when unable to free oneself, even if it be by the exercise of a little paternalism. Certainly, most men would prefer to be the slaves of the public, rather than of a private individual or corporation. But tastes differ.

Warehouseman, Storage, Charges for Goods Destroyed

The Supreme Court of California, on the authority of *Archer* v. *McDonald*, 36 Hun, (N. Y.), 194, has recently decided, that a warehouseman, under a contract to store property for a certain time for a certain sum, cannot recover for storage where the property is destroyed, though without negligence on his part, before the expiration of the time: *Cunningham* v. *Kenney*, 38 Pac. Rep. 645. But when it is the custom of warehousemen to collect charges for storage only when the goods are ordered out, an accidental burning of them before they are ordered out will not release the owner from the payment of storage: *Jones* v. *Chaffin*, (Ala.), 15 So. Rep. 143.